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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 OAKLAND DIVISION
19

20 ICONIX, INC.,
21 Plaintiff,
22 v.
23 LANCE TOKUDA, JIA SHEN, and
24 NETPICKLE, INC.,
25 Defendants.
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27
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Case No. C06-02201 SBA (JCS)

**STIPULATION AND ORDER
MODIFYING PRELIMINARY
INJUNCTION ORDER; NOTICE OF
WITHDRAWAL OF DEFENDANTS'
MOTION FOR A CLARIFICATION OF
ORDER GRANTING PRELIMINARY
INJUNCTION AND WITHDRAWAL
OF MOTION PURSUANT TO CIVIL
L.R. 6-3 FOR AN ORDER
SHORTENING TIME**

STIPULATION

Pursuant to Civil Local Rules 7-7 and 7-12, Plaintiff Iconix, Inc. (“Iconix”) and Defendants NetPickle, Inc., Lance Tokuda and Jia Shen (collectively, “Defendants”), by and through their respective counsel, hereby stipulate to and request the Court to issue an order modifying the Order granting Plaintiff’s Motion for Preliminary Injunction that was entered on September 26, 2006 (“Preliminary Injunction Order”), granting in part Plaintiff’s Motion for Preliminary Injunction. *See* Docket Item No. 158.

Paragraph (3) of the Preliminary Injunction Order states as follows:

3) Within 10 days of service of this Order, Defendants are required to deliver to counsel for Plaintiff, and to erase, any and all copies of software that would infringe Iconix’s copyrights, pursuant to 17 U.S.C. § 106, in any software code developed by Defendants or anyone acting in concert with them during the time they were employed by Plaintiff; except that Defendants’ counsel shall be permitted to retain one copy of any such software code to be used for litigation and not operational, purposes only.

Id. at 48.

On October 6, 2006, Defendants filed a Motion for a Clarification of Order Granting Preliminary Injunction. *See* Docket Item No. 166. Specifically, Defendants sought a clarification that they could erase *or* return, as opposed to erase *and* return, the software code that would infringe Plaintiff’s copyrights because the software code in Defendants’ possession exists on hard drives, as opposed to removable media such as CDs, which they contend cannot be returned and erased. In addition, Defendants also sought a clarification that their defense counsel may be permitted to make such copies of the software code as necessary to conduct the litigation because if permitted to retain only one copy of the software code, Defendants’ counsel would be limited in preparation of the case for trial.

Also on October 6, 2006, Defendants filed a Motion pursuant to Civil Local Rule 6-3 to have the motion seeking clarification heard on an expedited basis. *See* Docket Item No. 169. On October 10, 2006, Plaintiff filed a statement of non-opposition to the request for shortened time. *See* Docket Item No. 173.

On October 11, 2006, after further meet and confer, the parties reached an agreement with

respect to issues raised in Defendants' motion.

Accordingly, the Parties jointly request that the Court amend paragraph (3) of its September 26, 2006, Order to read as follows:

3) Within 10 days of service of this Order [the Preliminary Injunction Order], Defendants are required to copy to portable media and deliver to counsel for Plaintiff, and to erase, any and all copies of software that would infringe Iconix's copyrights, pursuant to 17 U.S.C. § 106, in any software code developed by Defendants or anyone acting in concert with them during the time they were employed by Plaintiff; except that Defendants' counsel shall be permitted to retain or make copies of such software code to the extent necessary to conduct this litigation, provided that any such copies are to be used for litigation and not operational, purposes only, and further provided that no copies may be transmitted to any person other than Defendants' counsel unless such transmitted copies are designated and treated pursuant to the Attorneys' Eyes Only provisions under the Protective Order dated August 16, 2006 in this case (Docket Item No. 127).

All other portions of the Court's September 26, 2006 Order remain in effect.

Further, based upon the Parties' agreement and conditioned upon the Court's approval of the stipulation modifying the Court's Order, Defendants agree to withdraw the motions filed on October 6, 2006.

Dated: October 12, 2006

MORRISON & FOERSTER LLP

/s/ Eric S. Walters /s/

Eric S. Walters
Attorneys for Plaintiff
ICONIX, INC.

Dated: October 12, 2006

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ Daniel J. Weinberg /s/

Daniel J. Weinberg
Attorneys for Defendants
LANCE TOKUDA, JIA SHEN, AND
NETPICKLE, INC.

ORDER


PURSUANT TO THE STIPULATION, IT IS HEREBY ORDERED that the Order entered on September 26, 2006, Document 158, IS MODIFIED by replacing paragraph 3) on page 48 in its entirety, with the following:

3) Within 10 days of service of this Order [the Preliminary Injunction Order], Defendants are required to copy to portable media and deliver to counsel for Plaintiff, and to erase, any and all copies of software that would infringe Iconix's copyrights, pursuant to 17 U.S.C. § 106, in any software code developed by Defendants or anyone acting in concert with them during the time they were employed by Plaintiff; except that Defendants' counsel shall be permitted to retain or make copies of such software code to the extent necessary to conduct this litigation, provided that any such copies are to be used for litigation and not operational, purposes only, and further provided that no copies may be transmitted to any person other than Defendants' counsel unless such transmitted copies are designated and treated pursuant to the Attorneys' Eyes Only provisions under the Protective Order dated August 16, 2006 in this case (Docket Item No. 127).

All other portions of the Court's September 26, 2006 Order remain in effect.

IT IS FURTHER ORDERED that Defendants' Motions filed October 6, 2006, seeking such modification are WITHDRAWN and TAKEN OFF CALENDAR pursuant to Local Civil Rule 7-7(e).

Dated: October 25, 2006.


Sandra Brown Armstrong
United States District Judge

ATTESTATION

I, Daniel J. Weinberg, am the ECF User whose identification and password are being used to file this Stipulation and [Proposed] Order Modifying Preliminary Injunction Order; and Notice of Withdrawal of Motions. Pursuant to General Order 45.X.B, I hereby attest that Eric S. Walters of Morrison & Foerster LLP, counsel for Plaintiff, has concurred in this filing.

Dated: October 12, 2006

/s/ Daniel J. Weinberg /s/

Daniel J. Weinberg